

# YOU MUST ABIDE TO RIDE



## Riders who repeatedly violate Transit Laws can be banned from using the system.

- Anyone arrested for a crime or cited on three separate occasions within a period of 60 consecutive days for infractions committed in a FAX vehicle, at a bus stop or on FAX property will now face a ban of 30 days. Offenders can be banned for up to a year for more serious offenses.
- Interfering with an operator of a transit vehicle, willfully disturbing others on or in a FAX facility or vehicle, and defacing transit property could all result in exclusion.
- Please be courteous, sit back, and enjoy the ride!



621-RIDE • [www.fresno.gov/fax](http://www.fresno.gov/fax)

CITY OF FRESNO  
TRANSIT SECURITY ADVISORY COMMITTEE  
ADMINISTRATIVE RULES

Issuance and Processing of Exclusions

The following Administrative Rules (Rules) shall govern the issuance and processing of prohibition orders by the Fresno Area Express (FAX) in accordance with the Fresno Municipal Code and Public Utilities Code (PUC) §99171.

Nothing in these Rules or the existence of these Rules shall prevent FAX from taking any lawful steps to protect its employees, passengers, and the FAX Transit System. Specifically, nothing in these Rules affects the right of FAX or law enforcement to request the immediate departure of any person posing a safety threat to system users, FAX personnel, or any other persons, or is in violation of any provision of criminal law or the Fresno Municipal Code. Further, nothing in these Rules affects the right of law enforcement to accomplish the forceful removal of any person posing an imminent threat, so long as the law authorizes such action.

**A. DEFINITIONS.**

As used in these Rules, the following terms shall mean:

Business Day. The term "business day" shall mean Monday through Friday, with the exception of FAX Holidays: New Year's Day, Martin Luther King Jr.'s birthday, , third Monday in February, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the Friday after Thanksgiving, Christmas Day, and any day or part of a day declared by the Council by ordinance or resolution, to be a holiday pursuant to Fresno Municipal Code Section 3-116 as amended from time to time. When the last business day of any time period set forth in these Rules falls on a FAX Holiday, an additional day shall be added to any time provisions set forth in these Rules by virtue of the holiday, excluding all weekend days.

Calendar Day. The term "calendar day" shall include all week days. However, when a calendar day falls on a FAX Holiday pursuant to the Fresno Municipal Code, an additional day shall be added to any time provisions set forth in these Rules by virtue of the holiday.

Exclusion Administrator. The term "Exclusion Administrator" shall include all FAX employees appointed by the Director of Transportation to conduct an initial review of a Prohibition Order issued pursuant to these Rules.

Exclusion Officer. The terms "Exclusion Officer" includes all City of Fresno Police Officers authorized to issue Prohibition Orders under these Rules.

Transit Dependent. The term "Transit Dependent" means a person who has no independent source of transportation and relies solely on public transit for trips of necessity, including but not limited to, travel to and from medical or legal appointments, school or training classes, places of employment, or obtaining food, clothing, and necessary household items.

Transit System. The term "Transit System" shall include the property, vehicles, equipment, and improvements of whatever nature, owned, leased, maintained, controlled, or operated by FAX to provide mass transportation for passengers or to provide for the movement of people, and includes any FAX vehicle, bus stop, or FAX facility.

## **B. ISSUANCE OF PROHIBITION ORDER.**

### **1. Authority for Prohibition Order**

FAX may exclude an individual from any or all parts of the FAX Transit System, as permitted by Public Utilities Code ("PUC") §99171 or other applicable law. In accordance with this authority, a person subject to a prohibition order may not during the period of exclusion, enter or remain upon any part of the FAX Transit System from which the person is excluded, except as permitted by the terms of the prohibition order or by applicable law.

A Notice of Prohibition Order may be issued by any authorized City of Fresno Police Officer who has received training from FAX, as required by PUC §99171 and the Fresno Municipal Code("exclusion officers").

### **2. Designation of Violations Eligible for Prohibition Order**

The violations eligible for a Prohibition Order and the corresponding length of exclusion is established by PUC §99171. A Prohibition Order may be issued to any person who:

- (A) On at least three (3) separate occasions within a period of sixty (60) consecutive days, is cited for an infraction committed in or on the Transit System for any act that constitutes a violation of any of the following:
  - (1) Public Utilities Code §99170(a)(2) – Interfering with the operator of operation of a transit vehicle, or impedes the safe boarding or alighting of passengers.
  - (2) Public Utilities Code §99170(a)(5) – Committing any act or engaging in any behavior that may, with reasonable foreseeability, cause harm or injury to any person or property.
  - (3) Penal Code §640(b)(6) – Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.
  - (4) Penal Code §640(b)(7) – Carrying an explosive or acid, flammable liquid, or toxic or hazardous material in a public transit facility or vehicle.
  - (5) Penal Code §640(b)(8) – Urinating or defecating in a system facility or vehicle, except in a lavatory. (This section does not apply to a person who cannot comply with this section as the result of a disability, age, or medical condition.).

- (6) Penal Code §640(b)(9) – Willfully blocking the free movement of another person in a system facility or vehicle.
- (7) Penal Code §640.5(a)(1) – Defacing with graffiti or other inscribed material the interior to exterior of the facilities or vehicles of a public transportation system.

**OR**

- (B) The person is arrested or convicted for a misdemeanor or felony committed in a vehicle, bus stop, or transit station of the FAX transit system for acts involving violence, threats of violence, lewd or lascivious behavior, or possession for sale of a controlled substance.

**OR**

- (C) The person is convicted of a violation of one of the following offenses:

- (1) Health and Safety Code §11532(a) – Loitering in a public place in a manner and under circumstances manifesting an intent to engage in drug-related activity.
- (2) Penal Code §653.22 (a) – Loitering in a public place with the intent to commit prostitution.

### **3. Length and Scope of Exclusions**

The length of any Prohibition Order shall be no greater than those permitted under PUC §99171(a)(2).

- (A) If issued pursuant to section 2.(A) above, the period of exclusion shall be:

- (1) For a period not exceed thirty (30) days for the first prohibition order;
- (2) For a period not to exceed 90 days for the second prohibition order issued within a rolling one-year period; and
- (3) For a period not to exceed 180 days for a third or subsequent prohibition order issued within a rolling one year.

- (B) If issued pursuant to section 2.(B)or(C) above, the period of exclusion shall be:

- (1) Thirty (30) days if issued pursuant to an arrest.
- (2) Upon conviction of a misdemeanor, the Prohibition Order may be extended for an addition period not to exceed a total of 180 days when added to the initial period of exclusion.
- (3) Upon conviction of a felony, the Prohibition Order may be extended for a period not to exceed one year, when added to the initial period of exclusion.

A Notice of Prohibition Order shall identify the violation supporting the exclusion and must state the length of exclusion. No person is permitted to vary the length of exclusion, except:

- a. In accordance with the findings of the Exclusion Administrator or the Hearing Officer. The Exclusion Administrator or the Hearing Officer may vary the length or scope of exclusion in accordance with his or her authority.
- b. In response to changed conditions. The Exclusion Administrator or the Hearing Officer may modify a prohibition order.
- c. In response to a finding by the Exclusion Administrator or the Hearing Officer, that exclusion is not warranted or does not comport with FAX policy. The Exclusion Administrator or the Hearing Officer may invalidate or modify a prohibition order, based upon a review of all the facts and circumstances, as provided by these Rules.

#### **4. Enforcement Requirements**

##### **a. Sufficiency of Facts and Cause for Citation or Exclusion**

All citations and exclusions issued for prohibited conduct must be based upon probable cause. In determining whether there is enough evidence to justify a prohibition order or citation, peace officers and exclusion officers may rely upon facts resulting from their own personal observations or reliable facts provided by witnesses or others.

##### **b. Notice of Exclusion**

Every person alleged to have engaged in conduct prohibited by PUC §99171(a)(1)(A)-(C) and sought to be excluded for such a violation(s), shall be issued a Notice of Prohibition Order. The Notice of Prohibition Order to be used for exclusions is incorporated by reference and attached hereto as Exhibit A.

The exclusion officer alleging the violation shall complete the Notice of Prohibition Order in its entirety and must provide a copy of the notice to the individual sought to be excluded.

In order to be deemed valid, the Notice of Prohibition Order must accurately denote the violating conduct and reference the applicable provision or statute that was violated, in accordance with PUC §99171(a).

The Notice of Prohibition Order may be issued to the person sought to be excluded contemporaneously with the course of conduct supporting the exclusion or at some time period after the violating conduct has occurred. When the Notice of Prohibition Order is issued to the person sought to be excluded at some time period after the violating conduct has occurred, the Notice of Prohibition Order must be personally served upon the person sought to be excluded as set forth in PUC §99171(b)(2)(A)-(C). Service may be accomplished by in-person delivery, registered mail, overnight delivery (with confirmation of delivery) or any other means agreed to by FAX and the person being served.

At no time may a Notice of Prohibition Order be served to a person sought to be excluded more than six (6) months after the violating conduct has occurred, unless agreed to in writing by the person being served.

Service of the Notice of Prohibition Order shall be deemed to be completed on one of the following dates:

- (1) On the date of delivery, if delivered in person.
- (2) On the date of confirmed delivery, for any delivery by mail.
- (3) For any alternative method of service, as provided in writing specifying the alternative method.

Proof of service shall be filed with the FAX Exclusion Administrator.

#### **5. Multiple Penalties**

An exclusion will not be issued for the same act or omission committed by a single person during a single interaction. However, multiple citations, or a citation and a prohibition order, may be issued to a single person who during a single interaction engages in multiple acts or omissions that constitute violations of the Fresno Municipal Code or those delineated in PUC §99171(a)(1)(A)-(C). The issuance of a citation or Notice of Prohibition Order to a person shall not prevent the arrest, prosecution, or conviction of that person for violation of criminal laws for the same or different act or omission.

#### **6. Stay of Prohibition Order**

In accordance with PUC 99171(b)(6), all prohibition orders will be subject to an automatic stay of ten (10) calendar days following the date of service. Thus, exclusions will not take effect until the eleventh (11<sup>th</sup>) calendar day following the date of issuance, or if review has been requested, the date on which the Exclusion Administrator or Hearing Officer's final order takes effect in accordance with review process set forth in these Rules, but no less than eleven (11) calendar days after service of the final order.

### **C. REVIEW AND APPEAL PROCEDURES.**

#### **1. Initial Review of Notices of Prohibition Order**

Every Prohibition Order issued by an exclusion officer shall be subject to the review of a FAX Exclusion Administrator. An Exclusion Administrator shall review each Notice of Prohibition Order to determine whether (a) the Notice of Prohibition Order is filled out completely and in a manner that permits a determination of validity; (b) whether the Notice of Prohibition Order conforms to these Rules; (c) whether the sufficiency of the narrative support submitted by the issuing officer warrants further review; and (d) whether the exclusion has been issued to a person not eligible for a complete exclusion under the circumstances outlined in Section 9 of these Rules.

An initial review may be requested by the person issued a Notice of Prohibition Order within ten (10) days after personal service to a FAX Exclusion Administrator. The request may be made by telephone 559-621-1393, in writing or in person at: 2223 "G" Street, Fresno, CA 93706-1600.

The FAX Exclusion Administrator shall determine the following:

- (a) Whether the prohibition order meets the requirements of subdivision (a) of PUC §99171; and
- (b) Unless the person has been convicted of the offense or offenses, whether the offense or offenses for which the person was cited or arrested are proven by a preponderance of the evidence.

If the Exclusion Administrator determines, based on the initial review, that the prohibition order is not adequately supported or that extenuating circumstances make dismissal of the Prohibition Order appropriate in the interests of justice, the Exclusion Administrator shall cancel the notice. The Exclusion Administrator shall cancel a prohibition order if it determines that the person did not understand the nature and extent of his or her actions or did not have the ability to control his or her actions. The cancellation of a Prohibition Order shall be effective immediately and the excluded person may continue to use the FAX Transit System subject to all rules and regulations regarding its use.

However, if the Exclusion Administrator determines that the Prohibition Order is valid, either in whole or in part, the Exclusion Administrator shall issue a written statement to that effect and may include any modification to the period or scope of the Prohibition Order.

The Exclusion Administrator determines that the person is dependent upon the transit system for trips of necessity, including, but not limited to, travel to and from medical or legal appointments, school or training classes, places of employment, or obtaining food, clothing, and necessary household items, the Exclusion Administrator shall modify the Prohibition Order to reasonably allow for those trips under the conditions established by the Exclusion Administrator. Any person entitled to such a modification of the prohibition order shall remain subject to all applicable laws, rules and regulations regarding the use of the Transit System, including but not limited to, providing proof of fare payment.

The burden of proof to establish the conditions for cancellation or modification, as provided above, is on the party seeking the cancellation or modification. The party seeking to establish the qualifying circumstances must do so by a preponderance of the evidence.

The Exclusion Administrator shall serve the results of the initial review to the person contesting the notice by personal service. This decision shall become final after the expiration of ten (10) days after service, unless the person is dissatisfied with the results of the initial review and requests an administrative hearing within the ten (10) days. The excluded individual shall be entitled to further review in the form of a hearing as provided below.

## **2. Right to an Appeal Hearing following the Initial Review**

Every person issued a Notice of Prohibition Order is entitled to a hearing as a matter of right. The purpose of the hearing is: (a) to review and determine whether the evidentiary basis for issuance of the prohibition order is sufficient as a matter of law; (b) to determine whether the length and scope of the exclusion is commensurate with the nature of the violation; (c) to render a finding on whether it is more probable than not that the individual engaged in conduct justifying the exclusion; (d) consider any mitigating and aggravating factors relevant to the scope and length of the exclusion; (e) and issue a final decision to sustain, modify, or set aside a Notice of Prohibition Order. All persons receiving a prohibition order shall receive notice of their right to a hearing on the Notice of Prohibition Order.

## **3. Initiation of Hearing Proceedings**

An individual who has received a Notice of Prohibition Order following an initial review, must contact FAX by 5:00 p.m. no later than the tenth (10<sup>th</sup>) calendar day following service of the Exclusion Administrator's decision in order to request a hearing. The Exclusion Administrator may be reached as follows:

By phone at:	559-621-1393
In writing or in person at:	2223 "G" Street Fresno, CA 93706-1600

The request may be made by phone, in writing or in person, but must be received by the Exclusion Administrator by the tenth (10<sup>th</sup>) calendar day following the date of personal service of the Exclusion Administrator's decision. An individual requesting a hearing need not demonstrate cause for the hearing, and the Exclusion Administrator shall immediately forward a copy of the Notice of Prohibition Order and any supporting documentation to the designated Hearing Officer.

The Hearing Officer, or his/her designee, will contact the individual by phone or mail to schedule a hearing within three (3) business days of receipt of the Notice of Exclusion. The Hearing Officer shall provide notice to the exclusion officer who issued the Notice of Prohibition Order of the date and time of the hearing in accordance with the Hearing Officer's procedures for issuing such notice.

The person requesting the hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted at a location selected by the Hearing officer, within the boundaries of the City of Fresno.

## **4. Scheduling of Hearings**

- a. **Hearing Date:** Each hearing shall be scheduled directly with the Hearing Officer or his/her designee within thirty (30) calendar days of the request. To the extent possible, the Hearing Officer shall make every attempt to schedule each hearing at a time that is convenient for appearance by the excluded individual, FAX, and any witnesses, including exclusion officers.

All hearings shall be scheduled on a weekday, Monday through Friday, during normal business hours.

- b. Continuance: The Hearing Officer may grant one continuance, on its own motion or the motion of one of the Parties, of no more than seven (7) calendar days. The Hearing Officer has the sole discretion to grant or deny a continuance. Further, the Hearing Officer has the discretion to impose a stay, pending the later hearing date.

## **5. Treatment of Evidence**

In conducting a hearing and reaching a decision, the Hearing Officer may rely upon any evidence that a reasonable person would rely upon in making an important decision or conducting personal business. Hearsay is admissible, except where its admission would offend due process. The Hearing Officer shall have the authority to compel testimony or evidence deemed necessary; in the Hearing Officer's sole discretion, to a fair decision. The Hearing Officer may receive testimony concerning the interpretation of the Fresno Municipal Code from any FAX representative.

The notice of prohibition order shall be prima facie evidence of the violation or violations pursuant to PUC §99171(a) establishing a rebuttable presumption affecting the burden of producing evidence. The person who issued the notice of prohibition order shall not be required to participate in an administrative hearing, unless their participation has been requested by the person requesting the hearing no less than five (5) calendar days prior to the hearing. Requests for such participation shall be made to the Hearing Officer by telephone, in writing, or in person through the Exclusion Administrator.

## **6. Statement of Rights by Hearing Officer**

The Hearing Officer shall advise all parties, through written correspondence or personally, when parties appear for the hearing, of the following rights:

- Hearings shall be informal and shall be conducted so as to facilitate the parties' ability to present their respective positions to the Hearing Officer. FAX shall present its reasons for the exclusion first, and then the person contesting the exclusion shall present his or her reasons in support of rescission or modification of the exclusion.
- The Hearing Officer may question the parties and witnesses, and shall review all evidence submitted by the parties.
- The hearing shall be electronically recorded.
- An aggrieved party has the right to seek Administrative Mandamus from the Fresno County Superior Court.
- A party has the right to representation by an attorney at their sole cost.
- FAX has the burden of proof, based upon a presentation of substantial evidence, to establish that it is more probable than not that the conduct justifying the exclusion occurred and that no factors are present to nevertheless warrant setting aside the exclusion.

## **7. Length and Scope of Exclusions**

The length and scope of prohibition order shall be determined in light of all the facts and circumstances giving rise to the exclusion. After consideration of the evidence presented, the Hearing Officer may sustain the exclusion, modify the exclusion, or set aside the exclusion. The Hearing Officer shall make a finding on whether it is more probable than not that the excluded individual engaged in the conduct supporting the exclusion. In addition, the Hearing Officer shall consider any mitigating or aggravating factors in determining the appropriate scope and length of the exclusion, that the Hearing Officer determines relevant, in his or her sole discretion.

If the Hearing Officer determines that the exclusion will be sustained but the scope or length of the exclusion is not commensurate with the seriousness of the violation, the Hearing Officer may modify the exclusion. An order modifying the exclusion should discuss the Hearing Officer's basis for the modification of the exclusion, including a discussion of findings related to the factors listed above.

## **8. Final Order by the Hearing Officer**

Within five (5) business days following the conclusion of a hearing, the Hearing Officer shall issue a final Order setting forth all findings and a decision on the exclusion, unless issuance of a final order within five (5) business days is not practicable. If a final order cannot be issued within five (5) business days of the hearing, the Hearing Officer shall extend the stay on the exclusion until the final order is effective. The Hearing Officer's decision following the administrative hearing shall be delivered by personal service.

The Final Order shall set forth the findings of the Hearing Officer and the basis for such findings. If the Final Order sustains or modifies the Notice of Exclusion, the Final Order shall clearly set forth the period of exclusion, including the exact starting and ending date. The Final Order shall notify the person excluded of the right to seek judicial review with the Fresno County Superior Court within 90 days of delivery by personal service. The Final Order shall be effective ten (10) days after personal service.

## **9. Circumstances Affecting the Applicability of Exclusions**

If the Hearing Officer determines that FAX has established that the violation was more probable than not, and that consideration of the factors justifies sustaining the exclusion, the Hearing Officer must nevertheless modify or set aside the exclusion in the circumstances defined below. Any person asserting the right to a qualified prohibition order on the basis of the factors set forth below shall have the burden of establishing their applicability by a preponderance of the evidence.

### **a. Exclusions Issued to Disabled Persons**

An individual with a disability shall not be issued a complete exclusion from the FAX Transit System unless the person engaged in violent, seriously disruptive, or criminal conduct, or in conduct posing a serious threat to the safety of others or to the operation of

the transit system. Absent such a finding, if a Hearing Officer determines that a violation was more probable than not, the Hearing Officer shall order a qualified prohibition order to permit an individual with a disability to use the system for trips of necessity (i.e., travel to and from medical and legal appointments, school or training classes, places of employment, obtaining food, clothing, and necessary household items, or for accessing any critical services).

#### **b. Exclusions Issued to Transit Dependent Persons**

A transit dependent person shall not be issued a complete exclusion from FAX's Transit System unless the person engaged in violent, seriously disruptive, or criminal conduct, or in conduct posing a serious threat to the safety of others or to the operations of the transit system. Absent such a finding, if a Hearing Officer determines that a violation was more probable than not, the Hearing Officer shall order a qualified prohibition order to permit a transit dependent person to use the system for trips of necessity (e.g., travel to and from medical and legal appointments, school or training classes, places of employment, obtaining food, clothing and necessary household items, or for accessing any critical services).

#### **c. Exclusions Issued Based Upon Expressive Conduct or Exercise a Religious Opinion**

A person issued a Notice of Exclusion for conduct determined to be expressive conduct protected by the First Amendment of the U.S. Constitution, shall not be excluded on the basis of such conduct. If the Hearing Officer finds that a violation was more probable than not, but also finds that the conduct involved expressive conduct or the expression of a religious opinion, the Notice of Prohibition Order shall be set aside, unless the Hearing Officer also finds that the effect of the conduct endangered public safety, disrupted service, or interfered with transit operations. For the purpose of this paragraph, the parameters of the free expression and religious protections afforded under this paragraph shall be coextensive with constitutional guarantees.

### **10. Treatment of Persons Who Do Not Provide a Mailing Address**

If a person issued a Notice of Prohibition Order cannot, or will not, provide a mailing address at the time of issuance by an exclusion officer, a Notice Letter from an Exclusion Administrator, correspondence from the Hearing Officer, and any other documents concerning the Prohibition Order, shall be made available for pick-up at FAX's administrative offices: 2223 "G" Street, Fresno, California 93706-1600. If at any time during the pendency of a hearing, an excluded individual, or his or her representative, designates an address for mailing, any correspondence or documents produced subsequent to the date of the request shall be mailed to the address designated by the individual. If an individual is represented by counsel in the exclusion proceedings, all written materials shall be provided to the individual's attorney, at the attorney's mailing address.

An excluded individual without a mailing address may personally appear at the FAX administrative offices, to request a hearing, or any other process to which the individual is entitled.

## **11. Effect of Failure to Provide an Address**

When a person receiving a Notice of Prohibition Order is not able, or refuses to provide a mailing address at the time of issuance, the Notice of Prohibition Order shall set forth the procedure for picking up any letters, notices, or orders produced by an Exclusion Administrator or Hearing Officer, in a manner that is consistent with these Rules.

## **12. Appointment of Hearing Officer**

The City shall appoint one or more Hearing Officer(s) based on the individual's qualifications, training, and objectivity. Hearing Officers may be FAX employees or agents, however, the Hearing Officers continued service, performance evaluation, compensation, and benefits, as applicable, shall not be directly or indirectly linked to his or her findings relating to the number of prohibition orders upheld by the Hearing Officer.

### **D. WRIT OF ADMINISTRATIVE MANDAMUS.**

All decisions issued by the Hearing Officer shall be subject to judicial review by the Fresno County Superior Court as provided by Code of Civil Procedure §1094.6. Judicial review must be filed within 90 calendar days of the delivery of the decision of the Hearing Officer by personal service.

Any judicial review proceedings shall not stay the effective date of the Prohibition Order, unless so ordered by a Judge of the Superior Court.

Any and all costs, fees, or other expenses related to judicial review shall be born by each party, unless otherwise ordered by the Fresno County Superior Court.

### **E. REQUEST FOR REFUND OF FARE MEDIA.**

A person issued a prohibition order under PUC §99171 may, within then (10) calendar days of the date the order goes into effect, request a refund for any prepaid fare media rendered unusable in whole or in part by the prohibition order. The request for refund should be made in writing to the Exclusion Administrator.

If there is a balance of useable fare media of one or more days following the period of the prohibition order, the refund shall be prorated based on the number of days the fare media will be unusable. The issuance of any refund shall be subject to the surrender of the fare media.

**APPROVED BY:**

  
\_\_\_\_\_  
City Manager  
CITY OF FRESNO

1-28-10

Attachment: Exhibit A – Notice of Prohibition of Order